IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

CRP.No. 1019 of 2004

AGAINST THE ORDER DATED 26/07/2004 IN IA 1516/03 IN F.A.O.NO.119/2003 IN OS.NO.744/2001 of II ADDL. DISTRICT COURT, KOLLAM

REVN. PETITIONER: APPELLANT: DEFENDANT:

SEENATH, SEENATH MANZIL,
THEKKEVILA CHERRY, MUNDAKAL VILLAGE,
KOLLAM.

BY ADV. SRI.P.R.VENKETESH

RESPONDENT: RESPONDENT: PLAINTIFF;

SUSEELA, ODAYILPURAYIDOM,
CANTONMENT NORTH, KOLLAM EAST VILLAGE.

BY ADV. SRI.P.SREEKUMAR
AND SRI.K.S.MANU

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

I.A.NO.2516/2004 IN C.R.P.NO.1019/2004

DISMISSED

26/11/2007 SD/- K.T.SANKARAN, JUDGE

//TRUE COPY//

AHZ/

K.T.SANKARAN, J.

C.R.P. NO. 1019 OF 2004 G

Dated this the 26th day of November, 2007

O R D E R

The defendant in O.S.No.744 of 2001, on the file of the Court of the Additional Munsiff of Kollam, is the revision petitioner. The suit was filed by the respondent against the revision petitioner for realisation of Rs.60,000/- with interest. The case of the respondent/plaintiff is that the revision petitioner executed a promissory note for Rs.60,000/- and she failed to pay the amount in spite of demand. The revision petitioner was set exparte. She did not file the written statement within time. On 26.3.2002, an exparte decree was passed against her. I.A.No.3470 of 2002 was filed to set aside the exparte decree. There was a delay of 189 days in filing the application. The trial court dismissed the application for condonation of delay and consequently dismissed the application for setting aside the exparte decree.

2. Challenging the order passed by the trial court, the petitioner filed F.A.O.No.119 of 2003, before the District Court, Kollam. There was a delay of 231 days in filing the appeal. I.A.No.1516 of 2003 was filed to condone the delay. The court below by the order dated 26.7.2004, dismissed the application for condonation of delay. The Civil Revision Petition is filed challenging that order.

3. It is submitted that written statement was filed by the revision petitioner along with the application for setting aside the exparte decree. The trial court was not satisfied with the explanation offered by the revision petitioner for occasioning the delay in filing the application. So also, the Appellate Court held that the petitioner did not satisfy the Court that she was prevented from filing appeal within time. The court below held that it is not proved that the petitioner/defendant was prevented by sufficient cause from appearing before the trial court when the suit was posted for trial.

4. After having heard the learned counsel for the petitioner and the respondent, I am of the view that the delay in filing F.A.O.No.119 of 2003 can be condoned on the petitioner furnishing sufficient security for the decree amount in the trial court and also paying a sum of Rs.3,000/- as costs to the respondent. The delay in filing the appeal was sought to be explained by saying that though the certified copy of the order of the trial court was ready, the Advocate's Clerk failed to receive the copy from Court. It is also stated that whenever the revision petitioner approached the Advocate's Clerk, she was told always that certified copy was not received. In the facts and circumstances of the case, dismissal of F.A.O.No.119 of 2003 only on the ground of delay may not be proper. At the same time, an unconditional order is also not called for in view of the

fact that not only the appeal was filed belatedly, but also the application for setting aside the exparte decree was filed with a delay of 189 days. It is also relevant to note that the revision petitioner failed to file the written statement in time and she filed it only along with the application to set aside the exparte decree.

5. Taking into account the facts and circumstances of the case, the Civil Revision Petition is allowed and the order dated 26.7.2004, in I.A.No.1516 of 2003 in F.A.O.No.119 of 2003, passed by the District Court, Kollam, is set aside on the following conditions:

i) The revision petitioner/defendant shall furnish sufficient security before the trial court, in the form of immovable property, for the decree amount, within a period of one month from today. It is submitted that the property belonging to the petitioner was attached in execution by the executing court. It is made clear that the property under attachment can be offered by the revision petitioner as security, provided, it is sufficient security for the decree amount. After furnishing security before the trial court, the revision petitioner shall file an affidavit before the District Court stating that the security has been furnished. Such affidavit shall be filed within six weeks from today.

ii) The revision petitioner/defendant shall pay a sum of Rs.3,000/- to the respondent as costs and shall produce a memo evidencing payment before the District Court, Kollam in F.A.O.No.119 of 2003, within a period of three weeks from today.

If the revision petitioner fails to comply with any of these conditions, the Civil Revision Petition shall be treated as dismissed. The District Court shall dispose of F.A.O.No.119 of 2003 within a period of four months from today.

(K.T.SANKARAN)
Judge

ahz/